
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA, : Case No. 1:05CV161 PGC
Petitioner, :
v. : **REPORT AND RECOMMENDATION**
WALTER C. BRIGHT III, President : District Judge Paul G. Cassell
of Northern Utah Special Needs : Magistrate Judge David Nuffer
Transportation, Inc., :
Respondent.

The United States of America filed a petition to enforce its August 19, 2005 IRS Summons ("the Summons") pursuant to 26 U.S.C. §§ 7402(b) and 7604(a). Judge Cassell issued an Order to Show Cause on February 8, 2006, which referred this matter to the undersigned under 28 U.S.C. § 636(b)(3) directing that the magistrate judge hear the evidence and make a written recommendation to the district judge for proper disposition. United States v. Jones, 581 F.2d 816, 817 (10th Cir. 1978) (referring IRS summons enforcement to magistrate judge under 28 U.S.C. § 636(b)(3)).

In the Order to Show Cause ("OTSC"), Respondent was directed to file a written response supported by sworn affidavits to the United States' Petition to Enforce the Summons ("the Petition") within ten days of the OTSC being served upon him. The OTSC informed Respondent that only those issues raised in the written response and supported by sworn affidavits would be considered by the Court and that all allegations in the Petition not contested by the written response and sworn statements would be deemed admitted. See United States v. Balanced Fin. Mgmt., Inc., 769 F.2d 1440, 1444 (10th Cir. 1985). The OTSC also directed the undersigned to convene a hearing on

February 27, 2006 at 11:15 a.m. to hear any arguments that would assist the undersigned in determining whether Respondent has shown cause. Based on the arguments and representations presented in the Petition and at the above-mentioned hearing, the undersigned reports the following:

1. Respondent failed to file any written response supported by sworn statements providing reasons why he should not be compelled to comply with the Summons.
2. At the hearing, Respondent agreed to provide to the IRS the information required by the Summons on or before March 27, 2006.

Consequently, the undersigned recommends that:

1. the District Court find that Respondent has failed to show cause why he should not be compelled to comply with the Summons; and
2. the District Court order Respondent to provide the information required by the Summons on or before March 27, 2006 to the IRS, which is located at 50 South 200 East, Salt Lake City, Utah 84111.

Within 10 days after being served with a copy of this Report and Recommendation, a party may serve and file specific, written objections. A party may respond to another party's objections within 10 days after being served with a copy thereof. Pursuant to 28 U.S.C. § 636(b)(1)(C), the District Judge to whom this case is assigned shall make a de novo determination upon the record of any portion of the undersigned's disposition to which specific written objection has been made. The District Judge may accept, reject, or modify the recommended decision, receive further evidence,

or re-commit the matter to the magistrate judge with instructions.

DATED this 28th day of February 2006.

BY THE COURT:


DAVID NUFFER, Magistrate Judge
United States District Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Utah, and that a copy of the foregoing Report and Recommendation and Order were mailed, postage prepaid, this 28th day of February, 2006 to the following:

Walter C. Bright, III
3401 W. 2500 N.
Clinton, UT 84015

